

TOWN OF MOUNT AIRY BOARD OF APPEALS

FINDINGS AND DECISION

CASE NO. MA-BOA-2022-03 SPECIAL EXCEPTION EXTENSION HEARING AUGUST 22, 2022

Applicant(s):	2504 Back Acre LLC c/o John Cavelle (“Applicant”)
Location:	2504 Back Acre Circle, Mount Airy, MD 21771 (Lot 18A, Twin Arch Business Park) (“the Property”)
Current Use:	J&J Trash Operation
Proposed Additional New Use:	Special Exception for above-ground storage tanks
Current Zoning:	I-District (Industrial)

WHEREAS, Applicant seeks approval of a special exception for proposed fuel/DEF storage tanks as outlined in the proposal set forth and attached in the Application and Proposal; and

WHEREAS, pursuant to the Town Code §112-62F(2) the bulk storage of oil, petroleum, gasoline, and similar flammable liquid and compressed gases in the I District is permitted under certain conditions set forth therein, namely that the total storage not exceed 200,000 gallons, that each container shall be set back from the nearest line of adjoining property by certain amount set forth in subsection (b), and that storage of liquids above ground shall be restricted by dykes sufficient in size to contain the amount of liquid stored; and

WHEREAS, the underground fuel station is more than 50 feet from the adjoining property lines, and in addition, the above-ground fuel tank is a double-walled tank meeting the requirements of UL-2085 and that the tank is labeled “Fireguard” and is thermally insulated, and as a double-wall tank, it meets industry requirements to contain any amount of liquid stored by puncture or leakage of the tank; and

WHEREAS, the intended use is for the fueling of fleet vehicles used in the operation of J&J Trash; and

WHEREAS, at its regularly scheduled Planning Commission meeting held on June 27, 2022, pursuant to the Town Code §112-62B, the Town’s Planning Commission took up and recommended approval of the special exception for the Property; and

WHEREAS, Town Staff similarly recommended approval of the special exception; and

WHEREAS, on August 22, 2022, the matter of the special exception application came before the Town's Board of Appeals pursuant to the Town Code; and

WHEREAS, the following members of the Board of Appeals were in attendance: Peter Helt, Chair; Judi Stull; Keith Gehle; and Wade Gallagher; and

WHEREAS, all witnesses were duly sworn; and

WHEREAS, the following witnesses were called by Applicant: Ronald Thompson, P.E., VanMar Associates, Inc.; and

WHEREAS, the staff report and all attachments, including the Application and attachments thereto, were marked as Exhibit 1; and

WHEREAS, the following members of the public were present and testified and/or offered public comment: Gary Frye – resides outside of Town but within the 21771 zip code; and

WHEREAS, John Breeding, Town of Mount Airy Community Planning Administrator, and Zoning Administrator provided a summary of the staff report and recommendation; and

WHEREAS, in summary, Ronald Thompson testified that he is engineer of record as to Lot 18A, and is employed with VanMar Associates, Inc. He is a professional engineer. He reviewed his educational background and land use experience. He testified on behalf of Applicant that the above-ground tank would be 10,000 gallons and that there would a fuel dispenser and a concrete pad underneath. A double-wall tank will be installed, and will be surrounded by a concrete wall around the fueling station. Any spillage would be collected into the separator. He testified to compliance with the specific standards set forth in §112-62F(2) and that they were compliant for reasons that follow. The bulk storage of fuel would be consistent with the allowable use within the I District on Lot 18A, the Lot 18A site plan was approved. Lot 18A is located along Back Acre Circle in the industrial zone. There will be an adequate water supply, sewage disposal and storm drainage, which was provided with the construction of Back Acre Circle and utility improvements made as a part of the lot development. Police and fire protection are provided using the existing constructed Back Acre Circle and Town roadways. The bulk fuel storage meets the required setback from the lot lines, is above ground and is located in the rear of the proposed site development. The use of adjacent land and buildings will not be discouraged, and the value of adjacent land and building will not be impaired by the location of the bulk fuel storage. Back Acre Circle is a loop roadway within the Twin Arch Industrial Park, and the location of the bulk fuel tanks will not impact the existing street. There are no future streets planned within the Twin Arch Industrial Park. The lot/development is located on Back Acre Circle, and it will not create traffic congestion or cause industrial or commercial traffic to use residential streets. The bulk storage tank will be 10,000 gallons above ground, located more than 50 feet from the side lot lines and rear property line. The bulk storage of diesel and gasoline meets the underground storage setback requirements listed in the Town

Code, §112-62F(2). In response to a question from Board Member Gallagher, reference in the Staff Report to an “underground tank” is in error. Mr. Thompson confirmed that both tanks will be above ground, not underground, and that there are no tanks on the property now. Mr. Thompson, in response to testimony by Mr. Frye set forth below, stated that fuel tanks are fairly common in industrial parks, and allow contractors to control quality of the fuel, and save costs. The tank will be 6 inches off the ground. The Town Code requires a concrete wall, not just bollards, and this plan calls for a concrete wall. Mr. Thompson noted that unless two walls are punctured, there will be no contamination into the ground; and

WHEREAS, in summary, Gary Frye testified that he called and sought a correction of the Staff Report and stated that he lives near Twin Arch Industrial Park. He testified that despite the fact that great lengths to add favorable conditions were undertaken, there will be a lot of fueling, and that there is nothing preventing human error that can cause spillage. He notes that the separator is only 1,000 gallons. He is concerned that forklifts can puncture the tank. He indicated that he disputes that there will not be an affect on surrounding neighborhoods, and asked if his well gets contaminated with diesel fuel, what happens then; and

WHEREAS, the proceedings were video and audio recorded; and

NOW, THEREFORE, the Board of Appeals upon receiving the evidence and upon motion to approve the Application, unanimously (4 votes to zero) voted to approve the Application, and grant the special exception for the fuel tanks on the Property having made the following findings and determinations:

1. The total storage will not exceed 200,000
2. Each container shall set back from the nearest line of adjoining properties as required by the Town Code:

Water Capacity of Container (gallons)	Underground Storage (feet)	Aboveground Storage
0 to 2,000	25 feet	25 feet, plus 1 inch per each foot height of the container
2,001 to 30,000	50 feet	50 feet, plus 1 inch per each foot of height of the container
30,001 to 200,000	75 feet	100 feet, plus 1 inch per each foot of height of the container

3. Storage of liquids above ground will be restricted by dykes sufficient in size to contain the amount of liquids stored.
4. That the conditional use for aboveground storage tanks on the Property would not impose a greater impact located on the Property as compared to other properties

within the I Zone. *People's Counsel for Baltimore County v. Loyola College in Maryland*, 406 Md. 54, 89-90 (2008), discussing and quoting *Schultz v. Pritts*, 291 Md. 1, 223-23 (1981) ("We now hold that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location with the zone.").

5. That the Applicant be and hereby is granted a special exception for bulk storage of oil, petroleum, gasoline, and similar flammable liquid and compressed gases in an aboveground 10,000 fuel tank with a separate DEF tank and fuel dispenser pursuant to §112-62F(2), subject to the following conditions:
 - a. That the fuel tank shall be 10,000 gallons;
 - b. The aboveground tank will be a jacketed, double-wall storage tank and in addition, the bottom of the tank shall be seal welded and coated with a highly corrosion resistant epoxy.
 - c. That there shall be one aboveground fuel dispenser;
 - d. That there shall be one aboveground card reader;
 - e. That one above ground Diesel Exhaust Fluid (DEF) tank shall be filled with a mixture of 67.5% and 32.5% urea (a compound of nitrogen that turns to ammonia when heated), in order to control the diesel exhaust into the environment and is not a harmful and overly toxic chemical;
 - f. That there shall be a concrete pad for fuel system operations;
 - g. That there shall be a canopy for the fuel system;
 - h. That there shall be concrete filled bollards, double-walled, around the underground fueling station.
6. The exhibits and sign in sheet for witnesses are attached hereto.

ATTEST:

John Breeding,
Zoning Administrator
Community Planning Administrator
Town of Mt. Airy

Peter Helt, Chair
Town of Mount Airy
Board of Appeals



**Staff Report
Planning Commission Recommendation
to the Board of Appeals
August 22, 2022**

BOA NO.: MA-BOA-2022-03

OWNER: 2504 Back Acre LLC c/o John Cavell
10610 Harp Road,
Walkersville, Maryland 21793

APPLICANT: 2504 Back Acre LLC c/o John Cavell
10610 Harp Road,
Walkersville, Maryland 21793

PROPOSED USE: Above ground Fuel and DEF storage tank

REQUEST: The applicant is requesting approval for an above-ground fuel and DEF storage tank.

PROJECT INFORMATION:
ADDRESS/LOCATION: 2504 Back Acre Circle, Mount Airy, Maryland 21771
COMP. PLAN: I- Zoning (Industrial)
WATER/SEWER: W-1/S-1 Existing/Final Planning (Well Head Protection area)

HISTORY / BACKGROUND:

This applicant received approval of a site development plan for lot 18A the current location of the J&J Trash – 2504 Back Acre LLC corporate office. The Planning Commission granted a favorable recommendation for the proposed above-ground fuel storage tanks at the July meeting.

Attached is the Petition for Special Exception request, outlining the location of the proposed Fuel/DEF storage tanks. The applicant has also included the code §112-62F(2) Special Exception (attached) with a point-by-point repose to that section.

Staff recommendation:

The Planning Commission is forwarding this special exception request to the Board of Appeals with a favorable recommendation to allow a Fuel storage tanks on the property located at 2504 Back Acre Circle, Mount Airy, Maryland, 21771.

If the Board of Appeals approves this special exception request. The applicant would need to go through the review and approval by the Town Planning Commission of an Amended site plan that would need to meet all Town, County, and State requirements. Town Staff will require a cover roof over the proposed tanks as part of this Amended site plan.

BOARD OF APPEALS - TOWN OF MOUNT AIRY - MARYLAND

PETITION FOR
SPECIAL EXCEPTION
UNDER ZONING ORDINANCE

CASE NO. MA-BCA 2022-03
DATE FILED _____
FILING FEE _____
DATE PAID _____
ZONING DIST. _____
HEARING DATE _____

Petition is hereby made for a Above ground 10,000 gallon Fuel Tank under the Zoning Ordinance, as follows:

Location of property: East Side of Back Acre Circle / 800 ft from Aaron Lane

NSEW side of road; distance NSEW from nearest intersecting road

Subdivision Twin Business Park Section IV Lot 18A Block _____

Street and Number 2504 Back Acre Circle Zoning Classification Industrial (I)

Use Proposed:

Location of J & J Trash Services operations and truck fleet

Zoning Ordinance subsection(s) providing for proposed use: 112-62 F(2)

Owner of Property: Name 2504 Back Acre LLC

Address c/o John Cavell 10610 Harp Road, Walkersville, MD 21793

Petitioner's present legal interest in property: (CHECK ONE)

☒ Owner (Including Joint Ownership) _____ Lessee _____ Tenant other than as lessee(describe) _____

Has any previous petition of appeal involving this property been made to the Board: If so, give Case Number(s):

N/A

Further comments, if any: J & J Trash Services proposes to consolidate operations to Lot 18A Twin Arch Business Park. Trash truck fleet operations and maintenance will take place on the lot. The above above ground fuel storage tank provide significant savings in fuel operations.

I hereby affirm that all of the statements and information contained in or filed with this petition are true and correct.

John Cavell
Signature of Petitioner

10610 Harp Road, Walkersville, MD 21793

Address of Petitioner

Rev 3/09

RECEIVED
MAY 12 2022

BY:

LOT 18A ZONING ORDINANCE SPECIAL EXCEPTION

PROPOSAL

225 Bucheimer Road, LLC has developed Lot 18A in the Twin Arch Industrial Park Section Four. The use on Lot 18A in the base operations for J & J Trash Service. Since the initiation of operations from Lot 18A, the cost of fuel has steadily risen such that it is cost prohibitive to the business operations and control of operating expenses. J & J Trash Service proposes the installation of an above ground 10,000-gallon fuel tank for trash truck fuel. The fueling station will consist of the following:

1. One 10,000-gallon above ground fuel tank. The underground tank is a jacketed double wall storage tank. In addition, the bottom of the tank is seal-welded and coated with a highly corrosion resistant epoxy.
2. One above ground fuel dispenser.
3. One above ground card reader.
4. One above ground Diesel Exhaust Fluid (DEF) Tank. The DEF tank is filled with a mixture of 67.5% water and 32.5% urea. Urea is a compound of Nitrogen that turns to ammonia when heated. Urea is synthetically made byproduct of urine. The DEF tank fluid is used in diesel engines to control the diesel exhaust into the environment. Urea is not a harmful and overly toxic chemical.
5. Concrete pad for fuel system operations.
6. Canopy for the fuel system.
7. Concrete filled bollards around the Underground Fueling Station.

The above items for the underground fuel system meet the containment requirements of the Town Code.

The Variance requested therefore is to install an above ground fuel tank/fueling system on Lot 18A.

§ ORDINANCE 112-62 F(2). Special Exceptions.

(2) Bulk storage of oil, petroleum, gasoline and similar flammable liquid and compressed gases. In an I District and subject to the requirements of that district except as herein provided:

- (a) Total storage not to exceed 200,000 gallons.
- (b) Each container shall be set back from the nearest line of adjoining property as follows:

Water Capacity of Container (gallons)	Underground Storage (Feet)	Aboveground Storage
2001 to 30,000	50 feet	50 feet, plus 1 inch per each foot of height of the container

- (c) Storage of liquids above ground shall be restricted by dikes sufficient in size to contain the amount of liquid stored.

The underground fuel station is more than 50 feet from the adjoining property lines. In addition, the above ground fuel tank is a double walled tank meeting the requirements of UL-2085. The tank is labeled Fireguard and is thermally insulated. As a double wall tank, it meets the industry requirements to contain any amount of liquid stored by puncture or leakage of the tank.

General and Specific standards for special exception uses.

- (a) *That proposed use, including its nature, intensity, and location, is in harmony with the intent of the Town Master Plan and the orderly and appropriate development of the district.*

Lot 18A is located along Back Acre Circle in the Industrial Zoned Twin Arch Business Park. The proposed use by J & J Trash Service is consistent with the allowable used within an existing zoned Industrial District. The Site Plan for Lot 18A was approved by the Town.

- (b) *That adequate water supply, sewage disposal, storm drainage and fire and police protection are or can be provided for the use.*

Adequate water supply, sewage disposal and storm drainage were provided with the construction of Back Acre Circle. In addition, utility improvements were part of the lot development. Police and fire protection are provided using the existing constructed Back Acre Circle and Town roadways.

- (c) *That the use of adjacent land and buildings will not be discouraged, and the value of adjacent land and buildings will not be impaired by the location, nature and height of buildings, walls and fences.*

The bulk fuel storage meets the required setback from the lot lines, is above ground, and is located in the rear of the proposed site development. The use of adjacent land and buildings will not be discouraged, and the value of adjacent land and building will not be impaired by the location of the bulk fuel storage.

- (d) *That the use will have proper location with respect to existing or future streets giving access to it and will not create traffic congestion or cause industrial or commercial traffic to use residential streets.*

Back Acre Circle is a loop roadway within the Twin Arch Industrial Park. The location of the bulk fuel tanks will not impact the existing street and there are no future streets planned within the Twin Arch Industrial Park. The lot/development is located on Back Acre Circle, and it will not create traffic congestion or cause industrial or commercial traffic to use residential streets.

(e) That the specific standards (§112-62F) set forth for each particular use for which a special exception may be granted have been met except in the case of nonconforming structures where the Board determines that no adverse impact will result.

(2) Bulk storage of oil, petroleum, gasoline and similar flammable liquid and compressed gases. In an I District and subject to the requirements of that district except as listed in Ordinance §112 F(2).

The bulk fuel storage tank will a 10,000-gallon above ground fuel tank. Located more than 50-ft from the side lot lines and rear property line, the bulk storage of diesel and gasoline meets the Underground Storage setback requirements as listed in Ordinance §112 F(2).